

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

AUG 31 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0277-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
ROBERT ANTHONY WARD,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2007112160001DT

Honorable Sally Schneider Duncan, Judge

REVIEW GRANTED; RELIEF DENIED

William G. Montgomery, Maricopa County Attorney
By Gerald R. Grant

Phoenix
Attorneys for Respondent

Robert A. Ward

Kingman
In Propria Persona

V Á S Q U E Z, Presiding Judge.

¶1 Following a jury trial, petitioner Robert Ward was convicted of taking the identity of another and forgery. After finding he had two prior felony convictions, the trial court sentenced him to concurrent, presumptive prison terms of ten years. This court affirmed his convictions and sentences on appeal. *State v. Ward*, No. 1 CA-CR 08-0738

(memorandum decision filed Apr. 20, 2010). After appointed counsel filed a notice stating he did “not believe that there is any new evidence, trial errors, sentencing errors, or ineffective assistance of counsel” to raise in a petition for post-conviction relief, Ward filed a supplemental, pro se petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P. Ward now challenges the trial court’s denial of that petition. “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no such abuse here.

¶2 In his petition for review,¹ Ward raises numerous claims, which we summarize as follows: fingerprint comparisons were inappropriate; there were speedy trial, disclosure, and double jeopardy violations; and, the state tampered with evidence and presented perjured testimony about his prior convictions. Ward also asserts trial and appellate counsel were ineffective.

¶3 Based on the record before us, we cannot say the trial court abused its discretion in dismissing Ward’s petition. Rule 32.2(a)(1) provides “[a] defendant shall be precluded from relief under this rule based upon any ground” that is “[r]aisable on direct appeal.” Although certain specified claims are excepted from the rule of preclusion

¹After the state filed its response to the petition for review, Ward filed a “Supplement to Petition for Review,” which we treat as a reply thereto. To the extent Ward presented new arguments or new evidence to support his previously raised claims, we will not consider them on review. *See* Ariz. R. Crim. P. 32.9(c).

pursuant to Rule 32.2(b), Ward's claims do not fall within these exceptions.² With the exception of the claims of ineffective assistance of counsel, Ward could have raised all of his claims on appeal, but he did not. Instead, he essentially reasserts on review the arguments he raised in his petition below and, notably, does not explain why he should not be precluded from raising these arguments at this juncture. We thus find no abuse of discretion in the court's summary denial of post-conviction relief on these claims. *See* Ariz. R. Crim. P. 32.6(c).

¶4 Additionally, although not precluded, Ward's claims of ineffective assistance of trial and appellate counsel are without merit. In order to raise a colorable claim of ineffective assistance of counsel, a defendant must establish that counsel's performance fell below an objectively reasonable professional standard and that the deficient performance was prejudicial to the defense. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *State v. Nash*, 143 Ariz. 392, 397, 694 P.2d 222, 227 (1985). Ward has shown neither deficient performance nor prejudice resulting from either attorney's performance. He has failed to provide concrete and factually supported examples of counsel's misconduct (he asserts, for example, "[t]hroughout the proceedings and trial, there] were problems"), much less explain how the perceived misconduct caused him prejudice. Therefore, because Ward failed to raise colorable claims of ineffective assistance of counsel, the court did not err in rejecting them.

²Although Ward obliquely mentions on the final page of his petition for review that "there is also [a] change in the sentencing laws," suggesting he may be attempting to assert he is entitled to relief based on a significant change in the law pursuant to Rule 32.1(g), Ariz. R. Crim. P., it does not appear he presented any meaningful argument to support such a claim below, nor has he done so on review.

¶5 Ward's claims are either clearly precluded or without merit, and the trial court therefore properly dismissed his petition for post-conviction relief without conducting an evidentiary hearing. Accordingly, although we grant the petition for review, relief is denied.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge